

1 is the right of the public to receive suitable access  
2 to social, political, aesthetic, moral and other ideas  
3 and experiences which is crucial here. That right may  
4 not constitutionally be abridged by Congress or by the  
5 FCC."

6 So the Supreme Court decision is every bit  
7 as pertinent to our discussion of the ownership rules  
8 as the D.C. Circuit opinions that have asked the FCC  
9 to justify our current rules.

10 We've got to build a solid evidentiary  
11 record to support our rules as my colleagues have  
12 indicated. But we've also got to bear in mind that  
13 the Supreme Court mandate to promote the core public  
14 interest values is also our job. We need to promote  
15 diversity, localism and competition in our media  
16 markets. And **our** decisions can't possibly rest on  
17 just empirical evidence alone. We've got to examine  
18 in quantitative data and I commend the Chairman's  
19 leadership in conducting these FCC sponsored ownership  
20 studies. These studies and the critiques of them, I  
21 think, offer us a key part of our current record. But  
22 these questions do not lend themselves to purely  
23 quantitative answers. We need to hear about your  
24 experiences as participants in the media marketplace.  
25 You know, government rulemaking inherently involves

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1 making predictive judgments about what's going to  
2 happen as a result of actions that we take now. And  
3 how can we possibly say that we can come up with any  
4 scientific proof about what's going to happen based on  
5 some kind of quantitative data? We've got to look at  
6 what's happened in the past. We need to look at  
7 history. We need to look at the radio market and see  
8 if we're satisfied with what happened as a result of  
9 taking the cap off entirely as Congress did to the  
10 amount of radio stations that people in this country  
11 can own.

12 I don't think a lot of people in this  
13 country are happy about what they hear on the radio.  
14 I know a lot of Members of Congress have expressed  
15 concerns directly to us on the Commission.

16 So we need to make predictive judgments  
17 that's done in traditional anti-trust analysis as  
18 well, but those judgments have to be rooted in a  
19 solid, evidentiary record, but let's not pretend that  
20 this is science. The questions before us just don't  
21 lend themselves to mathematical proofs. We've got to  
22 use our judgment and the courts have time and again  
23 affirmed the right of this Commission to exercise its  
24 judgments in trying to determine what is the public  
25 interest which is our legal mandate.

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1           So how do we determine what media  
2 ownership rules best promote the public interest?  
3 This task is daunting and it's made even more  
4 challenging by the short time frame that's been  
5 proposed for this proceeding.

6           One panelist in our last hearing observed  
7 that the FCC plans to revamp all of its rules in a  
8 shorter time frame than an NBA basketball season and I  
9 joined the Commission part way into that season. I  
10 view this form as another step in our record building  
11 efforts and another step getting close to the process  
12 of getting ready to make those decisions. The  
13 panelists that we have before us are a cross section  
14 of some of the many stakeholders in this proceeding.  
15 They're journalists, content producers, broadcasters,  
16 educators, but even more importantly, they're  
17 listeners, viewers and participants in our democracy.  
18 You all have a stake in this proceeding and we want to  
19 hear your views today.

20           It's been noted that we have over 15,000  
21 comments on the record in this proceeding, a huge  
22 number by FCC standards, but there's 250 million  
23 people in this country and all of them are affected by  
24 this. So today is part of an effort and we need to  
25 make a lot more efforts just like this to reach out

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1 and get more input on these massive decisions that  
2 we're about to make.

3 Like I said, your participation is crucial  
4 in FCC decision making. The process depends on it and  
5 more importantly the outcome depends on it. There's  
6 no way the Commission can fully understand the impact  
7 that our decisions are going to have on different  
8 constituencies unless we hear from them.

9 If we're to craft media ownership rules  
10 that best serve the public interest as we're required  
11 to do, we've got to hear from the public and that's  
12 why I'm here.

13 I don't know yet what media ownership  
14 rules will best serve the public interest, but I know  
15 that the FCC must proceed with caution as we  
16 reconsider our existing rules. Further media  
17 consolidation can't easily be undone. Once the  
18 toothpaste is out of the tube, it's going to be  
19 difficult, if not impossible to put it back in. So  
20 thanks again for joining us and let's get to it.

21 MR. SNOWDEN: Thank you, Mr. Chairman and  
22 Commissioners. This morning, we will hear from three  
23 panels on the specific themes of diversity,  
24 localism and competition. The panels will be  
25 moderated by Tom Krattenmaker, who will first

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1 summarize the key broadcast ownership rules and  
2 issues.

3 Before I introduce Mr. Krattenmaker, let  
4 me briefly describe the two ways we have provided for  
5 members of the public to participate directly in  
6 today's program. First, while the panelists are  
7 speaking, members of the public are invited to write  
8 down any questions for the panelists on the index  
9 cards located on the tables at the back of the room  
10 when you came in. Those cards will be collected  
11 during the panel presentations. The questions will be  
12 forwarded to the moderator, who will pose them to the  
13 appropriate panelists following their opening  
14 statements.

15 Second, we have set aside 30 minutes at  
16 the end **of** each panel as a public comment period.  
17 Members of the public are invited to use the open  
18 microphones that are located in the middle **of** the room  
19 to offer comments regarding the pending rulemaking  
20 proceeding. If you are not able to express your  
21 comments today, you are welcome to submit them as a  
22 part of the record in the pending broadcast ownership  
23 rulemaking proceeding. To file your comments  
24 electronically, go to [www.fcc.gov](http://www.fcc.gov) and follow the  
25 instructions for ECFS Express.

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1           Now it is my pleasure today to introduce  
2           our program moderator, Mr. Tom Krattenmaker. Tom is  
3           Senior Counsel in the Washington office of Mintz  
4           Levin, where he focuses on telecommunications  
5           transactions and antitrust representation and  
6           counseling. Prior to joining Mintz Levin, Tom was  
7           Director of Research in the FCC's Office of Plans and  
8           Policy under former Chairman William Kennard. In that  
9           position, Tom oversaw the Commission's staff review  
10          and recommendations to the Commission regarding  
11          telephone, cable and satellite industry mergers.  
12          Before joining the Commission, Tom served as Special  
13          Counsel for Policy and Regulatory Affairs in the  
14          Antitrust Division of the Department of Justice.  
15          There he oversaw review of several mergers and other  
16          transactions in regulated industries. Tom also  
17          clerked for Justice John Harlan of the U.S. Supreme  
18          Court, and spent several years in academia. He was  
19          professor of law and Associate Dean at Georgetown  
20          University as well as Dean of the Marshall-Wythe  
21          School of Law at the College of William and Mary. He  
22          has also taught at the University of Connecticut  
23          School of Law and at the University of Natal in South  
24          Africa.

25                 We are honored and pleased to have Tom

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1 join us today and moderate our panel discussions.

2 MR.KRATTENMAKER: Thank you, Dane. It's a  
3 privilege and an honor for me to moderate today's  
4 hearings and I'd like to give my sincere thanks for  
5 that to each of the Commissioners and to the FCC's  
6 Media Bureau for inviting me here today and asking me  
7 to moderate this session.

8 I'd like to join with the Commissioners in  
9 thanking you for attending and also thanks to the  
10 people in Richmond for hosting us. For those of you  
11 who have not already guessed it from my accent, this  
12 is a bit of a homecoming for me. I am not a Virginian  
13 by birth, although I was born in South Jersey, but I  
14 spent most of my high school years in Richmond  
15 attending both Hermitage and Douglass Freedman High  
16 Schools. In fact, the high point of my career in  
17 public elective office occurred right here in Richmond  
18 in 1956 when I was elected President of the 8th Grade  
19 at Hermitage.

20 (Laughter.)

21 As you can tell from Dane's excessively  
22 kind introduction, my academic career has been in  
23 constant decline since then.

24 It is the opinion of a couple of people  
25 here that there might be some members of the audience

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1 who are not so interested in learning about my  
2 fascinating life as understanding why we are here and  
3 what the ground rules might be, so why don't I get to  
4 that.

5 Today's topics, what are we here for? The  
6 Commission is in the midst of reviewing, as you've  
7 heard from the Commissioners, in one comprehensive  
8 proceeding, all of its rules that limit the extent to  
9 which owners of radio and television broadcast  
10 facilities can control additional outlets or related  
11 businesses. There are essentially six of these rules  
12 under review. Now remember, Dane told you I spent 30  
13 years in legal education, so you pay attention because  
14 there is going to be a pop quiz when I finish.

15 Four of these six rules center around  
16 local markets. They are first, the local TV station  
17 ownership rule. This rule provides that no one may  
18 own more than two TV stations in any one market and  
19 may own two only under certain conditions concerning  
20 the size of the market and the strength of the co-  
21 owned stations.

22 There's also a local radio ownership cap.  
23 This provides that a firm may own up to eight radio  
24 stations in one market, depending on the size of the  
25 market which is to be measured by the number of radio

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1 stations in that market.

2 Next we have the local TV-radio cross  
3 ownership rule which provides that a firm that owns  
4 only one TV station in a local market may own one,  
5 four or seven radio stations in that market as well,  
6 depending on the size of the local market. In this  
7 case that market is measured by taking account of not  
8 only the number of radio and TV stations, but also the  
9 number of cable systems and newspapers in that market.

10 And the final local rule that's in this  
11 proceeding is the broadcast newspaper cross ownership  
12 ban, which provides that no one may own both a daily  
13 newspaper and either a TV or a radio station in the  
14 same market.

15 The other two rules center around national  
16 markets. First, there is a limitation on TV network  
17 mergers. No merger is permitted between firms that  
18 are among the top four television ownership networks,  
19 but a top four network may merge with a network  
20 outside the top four.

21 In addition, there's a national TV station  
22 ownership cap. No company may own a group of  
23 television stations that in the aggregate can reach  
24 more than 35 percent of U.S. households. There is no  
25 corresponding limit on the number of radio stations

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1 that any firm can own nationwide.

2 Okay, got all that? It's quite a  
3 mouthful. It's easy for me to say. I practiced it.  
4 But actually, it's not all that hard. As a summary  
5 overview, just think local and national. In local  
6 broadcast markets such as Richmond, there are rules  
7 limiting TV plus TV, radio plus radio, radio plus TV,  
8 and newspapers owning either radio or television.  
9 Then at the national level there are limits on TV but  
10 not radio network mergers, and total national TV, but  
11 not radio ownership. And those are the rules that the  
12 Commission is reviewing in this proceeding.

13 Now as you probably have already figured  
14 out, and as some of the Commissioners have alluded to,  
15 these ownership rules were not all created at the same  
16 time. For example, the antecedents of the local radio  
17 rule traced back almost all the way to 1927 when the  
18 Federal Radio Commission, the precursor to the Federal  
19 Communications Commission was set up, while the  
20 newspaper ownership rule is relatively new, it's about  
21 30 years old.

22 Additionally, they are not only different  
23 ages, but these rules grew up in silos, so to speak,  
24 not always taking account of one another or not  
25 overtly taking account of one another. For example,

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1 did you note and if you did you're doing a good job of  
2 keeping up, how the local ownership rule usually, but  
3 not always, takes account of local market size and  
4 when the rule does take account of local market size,  
5 they don't all measure the size of the market in the  
6 same way.

7 Further, these rules have never before  
8 been exhaustively reviewed as part of a single  
9 comprehensive package. So it's really quite a  
10 daunting task that the Commissioners face and much  
11 easier to be a moderator than a Commissioner on this.

12 I think for those of you who are here  
13 today, it's important to know not only what the rules  
14 are, but why they are being reviewed collectively and  
15 so thoroughly today and why the terms, competition,  
16 diversity and localism, have come to frame most of the  
17 discussion concerning those rules.

18 Let me talk a little bit about why now?  
19 Why is the Commission doing this now? You know what  
20 rules are on the table. Why are they on the table  
21 today? Fundamentally, they're on the table today  
22 because of what Congress did in one section of its  
23 comprehensive communications law reform legislation,  
24 the Telecommunications Act of 1996.

25 When Congress addressed broadcast

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ownership rules in the 1996 act, it did three things.

First, it eliminated the Commission's national radio ownership limits and it raised both the local radio caps and the national TV caps. Then, Congress directed the Commission to immediately tweak a couple of its remaining rules.

Finally, and most importantly here, Congress required the FCC to review each **of** its remaining broadcast rules every two years. What Congress said is that the question the FCC must address in these biennial reviews is whether "any **of** the rules" that is the six we just reviewed, "whether any of the rules are necessary in the public interest as a result **of** competition."

And the Federal Court that reviews the Agency's ownership rules has construed that provision as "carrying with it a presumption in favor **of** repealing or modifying the rules."

So the Commission has been directed to carry out these reviews now, and then to do it again two years later and again two years after that, etcetera, etcetera. Talk about the communication lawyers perpetual guaranteed income act. I join with all other members **of** the Federal Communications Bar Association in expressing our undying gratitude to

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1 Congress for having dug this very deep trough at which  
2 we may feed for years on end, and apparently, my  
3 grandson as well.

4 In addition to doing it every two years,  
5 according to the courts, the Commissioners have to  
6 approach the task with the presumption to at least  
7 modify the rules. Now it's also important to note  
8 these facts don't tie the Commission's hands and they  
9 don't ordain any particular outcome. Presumption  
10 doesn't mean fixed determination, but they do place  
11 limits both on how long the Commission can wait,  
12 perhaps not much longer than the course of an entire  
13 NBA season, and on its ability to preserve the rules  
14 without identifying evidence that clearly supports  
15 them.

16 Now I wanted to say a few words about the  
17 terms **of** the discussion, what you're going to hear  
18 from the veterans or the cognicenti here. **As I**  
19 indicated in discussing the rules, we've had limits on  
20 radio and TV ownership virtually from the inception of  
21 radio and television services in this country. So  
22 there's quite a lot of water already over the dam,  
23 including discussions, both learned discussions and  
24 unlearned discussions, about what is at stake here.

25 Most people, including most Commissioners

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1 who think about these issues, tend to conclude that  
2 the values at stake are those of competition,  
3 diversity and localism. And that these are three  
4 distinct values, each focusing on a different aspect  
5 of the effects of any media consolidation.

6 Let me try **to** illustrate this by taking a  
7 very simple hypothetical for you. Suppose someone  
8 wants to buy two television stations in Richmond,  
9 Virginia. Without knowing any further details about  
10 the transaction, we can already imagine three  
11 different potential opponents of that merger. One  
12 might say I worry about the effects of the merger --

13 [END TAPE 1, SIDE A; BEGIN TAPE 1, SIDE  
14 B.]

15 -- is I worry whether the merged firm,  
16 after the merger, will be able to behave  
17 anticompetitively, for example, by raising ad rates to  
18 monopoly levels or by cutting back its program day in  
19 order to restrict output. That's our competition  
20 issue.

21 A second opponent might say well, I don't  
22 really see a problem with competition here. In fact,  
23 this merger might be good for competition. It might  
24 create a more efficient firm, but competition is not  
25 the only value we care about. I worry about

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1 diversity. What I mean by that is I worry that the  
2 merger might result in fewer distinct points of view  
3 being aired in Richmond or in fewer differences in the  
4 types **of** programs being offered over the air to  
5 Richmond residents.

6 Now my hypothetical's third opponent might  
7 say I think that after this merger there will be more  
8 robust competition and just as much diversity of  
9 program and formats, but I worry about the impact of  
10 this merger on localism. That is, I worry that the  
11 owners and operators of the merged firm, as compared  
12 to the previous firms, will not be as deeply rooted in  
13 and in touch with the Richmond communities when  
14 programs, personnel or formats are chosen.

15 Now **of** course, certain broadcast  
16 combinations, real ones, not hypothetical ones, may,  
17 depending on one's point of view, raise significant  
18 questions with respect to one, two, three or none of  
19 those values. Nor are these categories **of** concern air  
20 tight. For example, as many of you have figured out  
21 already, concerns about localism or competition may  
22 each translate into a concern over diversity. There  
23 may be other value that needs to be accounted for as  
24 well. For one time I'll abuse my privilege as the  
25 moderator to interject a personal view here is I

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1 wonder why media consolidation rules should be seen as  
2 an aspect of the Commission's spectrum management  
3 duties. But since I seem to stand alone on that, I'll  
4 retreat back to my other role.

5 I mean to say, however, that if you think  
6 something other than competition, diversity or  
7 localism may be at stake, you're not necessarily the  
8 only one in the room who thinks that.

9 But the fact remains that most of what  
10 you'll hear today will be couched in terms of  
11 competition, diversity and localism. And how, if at  
12 all, the FCC's ownership rules should be influenced by  
13 each of those values.

14 And in fact, the staff has arranged the  
15 panels, the formal panels around each of those  
16 concepts.

17 **So** as a gross, but I hope useful over  
18 generalization, we're going to spend about six hours,  
19 snow willing, talking about radio and television  
20 ownership patterns, national and local, actual and  
21 potential and how those patterns might positively or  
22 negatively affect competition, diversity and localism.

23 Got that? That's what we're all here  
24 about.

25 Now how are we going to do that? We're

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1 going to do it, please, by following two rules. As  
2 your moderator, I'm asking that every participant,  
3 panelist, open miker and even Commissioner alike,  
4 please agree to abide by two and only two simple rules  
5 today. I base these rules on my experiences with  
6 public hearings, on my teaching experience and also  
7 frankly on my desire to prove that **I**, too, support the  
8 concepts of limited government and freedom of speech  
9 from oppressive regulatory oversight. So we'll have  
10 only two rules.

11 First rule is please stay strictly within  
12 your time limits. You are important. I am important.  
13 But she and he are equally important too. Every rule  
14 has an exception, of course. Exemptions from this  
15 rule will be granted, but only to those who need extra  
16 time in order to quote extensively **from one of** my  
17 books.

18 (Laughter.)

19 Or who are Commissioners. Double  
20 exemption, if you're both of the above.

21 Secondly, again with the exception **of** the  
22 Commissioners, of course, will you please as a formal  
23 matter speak through me. Think of me, if you wish, as  
24 a potted plant with a microphone. As moderator, I  
25 want to be able to direct the flow of discussion, but

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1 I will not cut it off. We don't want the panelists  
2 arguing back and forth with each other. I'd like you  
3 to come through me so I can bring other people in, if  
4 need be.

5 Thank you, in advance, for following these  
6 hopefully simple rules.

7 Now let's hear what's on your minds? For  
8 your opening statements, each panelist will be given  
9 five minutes and as I mentioned before, I would like  
10 you to introduce yourselves because you know better  
11 than I just what brings you here.

12 MR. BOZELL: Thank you, Mr. Krattenmaker.  
13 My name is Brent Bozell. I'm the Chairman and the  
14 founder of the Parents Television Council.

15 Good morning, Mr. Chairman, Commissioners  
16 and fellow panelists.

17 Mr. Chairman, I thank you for inviting me  
18 to address these hearings, but I confess at the start  
19 that I do so with a certain degree of trepidation.  
20 There is, for starters the angst one feels when his  
21 libertarian sensibilities are assaulted by the mere  
22 thought of federal intervention into ownership of  
23 private property. It's probably safe to say that I  
24 have never taken a position that does anything other  
25 than advocate open markets unfettered by government

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1 regulation.

2 It would follow then that as technology  
3 advances in the world of communications and presents  
4 new opportunities for expansion, we should all rejoice  
5 and not interfere with the opportunities provided by  
6 those who would enter into the market.

7 Chairman Powell, I believe, agrees with  
8 this. I believe he believes this has been the result.  
9 And in Chairman Powell's recent interview with a  
10 Hollywood reporter he stated, and I quote, "our  
11 statistics are since 1960, there's been something like  
12 a 195 percent increase in outlets and 139 increase in  
13 independent owners."

14 Chairman Powell went on to say "the truth  
15 is, by almost any measure, there are more networks  
16 than there ever were before. There are more  
17 television stations than there ever were before.  
18 There are more independent owners."

19 On the face ~~of~~ it then, it would seem that  
20 deregulation has worked and media consolidation is but  
21 a mythology. But then one scratches the surface,  
22 digging a little deeper, in this case looking at the  
23 FCC's own statistics and a different picture begins to  
24 emerge. In the past 25 years, the number ~~of~~ TV  
25 station owners has declined from 500 to 360. There's

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1       been a massive increase in the number of cable  
2       channels, yet almost three quarters *of* them are now  
3       owned by six corporate entities, four of which are TV  
4       networks. Four entities dominate the most popular  
5       cable programming as well as prime time network shows.  
6       Six entities control approximately two-thirds of all  
7       viewers.

8               The Commission's own research is  
9       devastatingly clear. And I quote: "Since there are  
10      approximately 106 million TV households, the average  
11      number of networks available is over 50 per household.  
12      This sounds like a large number. However, when we  
13      examine the ownership of these networks, we discover  
14      that almost three quarters of them serving  
15      approximately 4 billion subscribers are owned **by** six  
16      corporate entities. The four major TV networks, NBC,  
17      ABC, CBS, Fox and the two dominant cable providers,  
18      AOL-Time Warner and ATT Liberty, completely dominate  
19      the tuner."

20             And finally this, "the big three networks  
21      went from an ownership share of programming of 17  
22      percent in 1989 to 48 percent in 2002 through growth  
23      and mergers."

24             This, I believe, is not what deregulation  
25      was intended to accomplish. Obviously, the Commission

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1 cares a great deal about the diversity issue and  
2 obviously the industry cares a great deal about that  
3 issue as well. But what about the public which this  
4 Commission and the industry profess to serve? The  
5 Parents Television Council has over 750,000 members  
6 nationwide. I can only venture a guess, but I suspect  
7 that if a survey were taken of them asking them what  
8 they believe is the most important issue concerning  
9 television today, not one percent would point to  
10 diversity or competition or localism or media  
11 consolidation as an important issue. But I know what  
12 does top their list. Like the average American  
13 family, they are disgusted, revolted, fed up,  
14 horrified, I don't know how else to underscore this,  
15 by the raw sewage **of** the ultra violence, the graphic  
16 sex, the raunchy language that is flooding into their  
17 living rooms day and night through the television  
18 screen and poisoning the minds **of** an entire generation  
19 of youngsters whose parents' concerns are dismissed by  
20 an industry that admonishes them instead to stand  
21 guard over the TV sets, perhaps with a baseball bat to  
22 keep impressionable children away.

23 Now I ask the media behemoths how  
24 important the issue of indecency is to them. I wonder  
25 if you will find one single executive, I don't know of

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1 one, who will even speak out on this issue, much less  
2 do anything to stop it. And sadly, the **FCC's** record  
3 on the decency issue is lacking. After all, indecency  
4 on broadcast TV between the hours of 6 and 10 p.m.,  
5 when children are likely to be watching is against the  
6 law. And the FCC is charged by Congress with  
7 enforcing the law.

8 How many stations in the continental U.S.  
9 has it fined over the years since its Enforcement  
10 Division was formed for broadcasting indecent  
11 material? According to our research of the FCC's  
12 website, the answer is none.

13 **So** I would ask the Commission to consider  
14 this. If the public good is what is driving this  
15 debate, then the Commission ought to consider what it  
16 is the public wants, not what the network elite wants.  
17 The public is demanding that television shape up and  
18 stop poisoning the culture.

19 Our hope is that as the Commission debates  
20 the diversity and media consolidation issue, it keeps  
21 at the forefront the one question that really matters.  
22 What is the formula that will safeguard the rights of  
23 families?

24 Thank you, Mr. Chairman.

25 MR. KRATTENMAKER: Thank you. Mr.

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1 Corn-Revere?

2 MR. CORN-REVERE: Thank you, and thank you  
3 Mr. Chairman and Commissioners for inviting me to  
4 address this very important issue.

5 I am a partner of the Washington law firm  
6 of Hogan and Hartson, although I should add as sort of  
7 a footnote to my affiliation that that's going to last  
8 for exactly one more day. On Monday, I become a  
9 partner in the Washington, D.C. Office of Davis Wright  
10 Tremaine. I am not speaking on behalf of any clients  
11 today. I'm presenting solely my own views.

12 It's interesting this proceeding is about  
13 the broadcast ownership rules, but it's remarkable the  
14 extent to which it is becoming a discussion of  
15 broadcast content more than anything else, as Mr.  
16 Bozell's comments just indicated. The common  
17 denominator is a purported link to concentration which  
18 appears to create a multitude of sins beyond just a  
19 generalized concern about diversity.

20 Some participants in this proceeding argue  
21 that the media concentration has made television  
22 bland. Others claim that it leads to more programming  
23 that is decent or violent. Raw sewage, I guess, is  
24 the expression that Mr. Bozell used, indicating he's  
25 clearly been able to overcome his libertarian

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1 sensibilities.

2 Still others suggest that media  
3 concentration affects program quality, including the  
4 quality of news reports. The latest claim was made  
5 this week by Senator Zell Miller of Georgia. In an  
6 impassioned speech on the Senate Floor, he sharply  
7 criticized CBS for its planned reality show, "The Real  
8 Beverly Hillbillies." Senator Miller seemed to blame  
9 the advent **of** the show on media concentration,  
10 contrasting the current CBS Viacom Corporation with  
11 the CBS network of 1960s when, as he put it,  
12 "courageous CBS reporters risked their lives to cover  
13 the civil rights struggles in the South." Oddly  
14 enough, in 1963, CBS was criticized in Senate hearings  
15 for following the NAACP line.

16 Now this example struck me as particularly  
17 strange because as a kid growing up in rural Illinois,  
18 some of my favorite shows were on CBS and they  
19 included "The Beverly Hillbillies," "Petticoat  
20 Junction," and "Green Acres." I still one day aspire  
21 to having **a** cement pond.

22 (Laughter.)

23 Of course, there weren't many alternatives  
24 at the time. We received three over-the-air stations  
25 and cable was a long way off. Satellite TV, VCRs and

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1 DVDs and personal digital video recorders weren't even  
2 a gleam in the eye.

3 By comparison, it's difficult to  
4 understand some of the current claims about reduced  
5 diversity. It's sobering, for example, to realize  
6 that when Chairman Newton Minnow called television a  
7 vast wasteland in May 1961, fewer programs were aired  
8 in New York, the largest medium market in the world,  
9 on all of its television stations each week than there  
10 are channels today.

11 It seems to me that blaming concentration  
12 in the media for the programs we don't like is  
13 somewhat like the drunk who searches for his keys  
14 under the street light, not because that's where he  
15 lost them, but because the lighting is so much better  
16 there.

17 (Laughter.)

18 After all, it's clear that the Commission  
19 would bump up against the first amendment pretty  
20 quickly if it tried to force programming that was less  
21 bland or if it tried to, God help us, ban those stupid  
22 reality TV shows.

23 There appears to be a belief by some that  
24 the government can achieve its goal of content  
25 regulation if only it frames its rules as economic

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1 regulations. The thought is that programming can be  
2 achieved by indirection, rather than by direct  
3 regulation.

4 Of course, it's also true that threats of  
5 new structural regulations or promises of relaxation  
6 of existing rules can become powerful inducements in  
7 getting broadcasters to reform their editorial  
8 policies.

9 The Commission should bear in mind that  
10 such economic regulations are not immune from first  
11 amendment scrutiny where their purpose is to affect  
12 the programming content on broadcast television.

13 There have been a few examples that we've seen in the  
14 past, for example, the U.S. Court of Appeals for the  
15 District of Columbia Circuit struck down a provision  
16 that prohibited extending any existing newspaper  
17 broadcast cross ownership waiver where it was  
18 motivated by hostility to the editorial policies of  
19 Rupert Murdoch.

20 Similarly, the D.C. Circuit has struck  
21 down EEO rules designed indirectly to promote minority  
22 viewpoints. The court said that it was too amorphous  
23 to simply promote diversity in the abstract, but on  
24 the other hand opined that if you were to try and  
25 promote specific viewpoints, then you would encounter

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1 significant first amendment problems.

2 More recently, the court held that the  
3 FCC's general power must be interpreted narrowly when  
4 it comes to programming issues, since such matters  
5 inevitably raise first amendment questions.

6 Trying to devise regulations with the  
7 purpose to improve the quality of broadcast programs  
8 is entirely too nebulous a goal and too difficult to  
9 attain. The FCC adopted the prime time access rule in  
10 the 1970s to promote news events and public affairs  
11 and instead brought us "The Gong Show."

12 The current demands to bring back the  
13 financial interest in syndication rules face the same  
14 problem. We are told that programs will be more  
15 creative and less bland if FCC limits the amount of  
16 network programming that the networks can own in prime  
17 time. But this argument was made to the Commission  
18 before in 1991 when the Commission was considering  
19 Fin-syn rules at the time. **My** boss at the time,  
20 Commissioner Quello, addressed the issue of  
21 programming quality and creativity in his dissent from  
22 the decision in 1991 not to eliminate the rules at the  
23 time.

24 And if I can beg your indulgence just to read what he  
25 said at the time --

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1 MR. KRATTENMAKER: The objection will be  
2 -- cover the quotations from an illustrious  
3 Commissioner.

4 MR. CORN-REVERE: Yes, thank you very  
5 much. At the time he wrote in his dissent, when  
6 presented with the argument that the creativity and  
7 quality of network programs would increase only if you  
8 retain the Fin-syn rules he said, "I asked one  
9 executive from an independent production company who  
10 had been urging me to preserve creativity and quality  
11 in television exactly how network involvement would  
12 have changed the company's most successful show, 'The  
13 A-Team.' He was stuck for an answer. Yet, even if he  
14 had been able to describe the particular ways in which  
15 barring a network's financial interest would improve  
16 'The A-Team,' I'm not at all certain that I would want  
17 my public interest calculated in this proceeding to  
18 turn on that answer."

19 MR. KRATTENMAKER: Thank you.

20 MR. CORN-REVERE: Thank you.

21 MR. KRATTENMAKER: Mr. Ireland?

22 MR. IRELAND: Yes, good morning, Chairman,  
23 Commissioners, distinguished guests. I'm Jay Ireland,  
24 President of the NBC Television Stations and I'm  
25 delighted to speak with you this morning regarding the

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1 realities of today's media marketplace that we compete  
2 in.

3 As you've heard from a number of people,  
4 today's world is not the world of forty years ago when  
5 markets like Washington, D.C. had fewer than 30 local  
6 metropolitan media outlets and Richmond had a mere  
7 handful.

8 Today, Washington has 65 broadcast  
9 stations alone and literally hundreds of other media  
10 outlets including hundreds of cable **or** satellite  
11 television networks, a hundred or more satellite radio  
12 channels, dozens more daily or weekly newspapers, and  
13 most importantly, the internet which empowers every  
14 user to be **his** or her own programmer, editor or  
15 content creator.

16 According to the **FCC's** own data, there's  
17 been nearly a 200 percent increase in the number of  
18 media outlets and 139 percent increase in the number  
19 of owners since 1960.

20 Let's look at the media landscape today  
21 that we compete in. There are over 2200 commercial  
22 television stations. Eighty-five percent **of** TV homes  
23 receive their signal from either cable or satellite  
24 which we've heard previously. The average number of  
25 channels received is 89 of which roughly 14 are

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1 over-the-air.

2 Here's another way to look at it. During  
3 prime time, the NBC and Telemundo stations attract  
4 less than 3 percent of the nation's total television  
5 audience. Yet, the FCC rules assume that nearly 35  
6 percent of the nation's television audience is  
7 continually watching NBC and Telemundo.

8 The programming side is equally  
9 competitive. NBC used to compete against two other  
10 networks to acquire first run prime time programming.  
11 Now it has to compete against as many as six other  
12 general entertainment, English language broadcast  
13 networks and over 100 targeted cable networks. As a  
14 result, on a typical night only 50 percent of the  
15 television viewers are watching the four major  
16 networks. This unprecedented and ever growing level  
17 of media and programming diversity is a reality of  
18 today's media marketplace.

19 In this diverse marketplace, it makes no  
20 sense to treat the broadcasting industry with  
21 ownership rules developed more than a half century  
22 ago. Those rules were based on a view of the world  
23 where broadcast television was the only source for  
24 video programming. That world no longer exists as we  
25 know. Therefore, the rules must reflect today's

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1 marketplace.

2 Let me now turn to the issue of diversity.  
3 Some advocates for more government intervention argue  
4 that relaxation of the national cap risk a local  
5 viewpoint. The reality is that in large markets there  
6 is virtually no solely local ownership of television  
7 stations. The only thing the cap does is protect  
8 national groups, many of which own 20 or more  
9 stations, from having to compete with network owned  
10 stations and markets.

11 Some who seek continued government  
12 protection argue that the national cap protects the  
13 affiliate's ability to pre-empt programming. That's  
14 not true. On average, a network affiliate pre-empts  
15 about as often as the average network O & O and an NBC  
16 affiliate uses only half of its annual pre-emption  
17 basket which are the number of hours of network  
18 programming an affiliate can pre-empt for any reason  
19 at all.

20 Indeed, the network-owned stations  
21 broadcast programming that is more local than the  
22 programming of the affiliated stations. As an  
23 example, NBC has owned Telemundo for less than a year  
24 and we have already added many newscasts in several  
25 key Spanish language markets. Also, the NBC-owned

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1 stations, on average, air more hours of local news per  
2 week than the independently owned stations.

3 The real measure of local relevance is the  
4 viewership in the community and on average, NBC's  
5 owned and operated stations perform at least as well,  
6 if not better, than most independently owned stations.

7 There's another way the FCC rules inhibit,  
8 rather than promote program diversity. NBC is up  
9 against the cap because it wants to make Telemundo a  
10 competitive Spanish language network. The cap  
11 prohibits NBC from continuing its efforts to acquire  
12 stations that might improve Telemundo's ability to  
13 provide real diversity of programming. That's the  
14 reality of the cap.

15 Let me quickly address ownership, local  
16 ownership rules. Some argue that local viewpoint  
17 diversity would be lost if any party was allowed to  
18 own more than two television stations regardless ~~of~~  
19 the size of the market or the stations involved. But  
20 the reality is that every market in the country has  
21 plenty of media outlets to ensure viewpoint diversity,  
22 even if the local ownership rule is relaxed.

23 Moreover, the FCC's existing rules treat  
24 different markets differently. The FCC believes that  
25 I can own two ~~of~~ nine stations without risking

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1 diversity in a smaller market, but in a larger market  
2 with many more stations, I am still limited to two  
3 stations. This result defies logic.

4 Some assert the common ownership results  
5 in common viewpoint. The reality is viewers demand  
6 differentiated content. It would not be in our  
7 economic interest to simply offer similar viewpoints  
8 on multiple stations. As an example, the NBC and  
9 Telemundo stations in the same market, I can tell you,  
10 clearly do not offer similar programming.

11 In conclusion, relaxation of the  
12 Commission's ownership rules will not diminish  
13 diversity. What will diminish diversity is the loss  
14 of media outlets because they can no longer compete in  
15 today's fragmented marketplace. If those who want  
16 more government intervention win, the reality will be  
17 that viewers will lose. This is because the broadcast  
18 networks will no longer be able to afford to obtain  
19 the top quality programming that viewers have grown  
20 accustomed to and on the local level, groups will not  
21 be able to gain efficiencies needed to compete.

22 The best protection against television  
23 becoming an increasingly marginalized source of  
24 information and entertainment in today's marketplace  
25 is not more regulation, but more competition,

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1 nationally, locally and in programming.

2 Thank you.

3 MR. KRATTENMAKER: Mr. Liggins?

4 MR. LIGGINS: Good morning, Mr. Chairman,  
5 and to the other Commissioners as well. I am Alfred  
6 Liggins, Chief Executive Officer and President *of*  
7 Radio One, Incorporated. Thank you for inviting me to  
8 speak before you today on this important issue of the  
9 benefit of diversity in media ownership.

10 I'm here today to share with you my  
11 experience and views on how diversity and media  
12 ownership have positively affected the broadcast  
13 industry and the American public. I trust that at the  
14 conclusion of this hearing, I will have provided some  
15 additional insight as to the difference such diversity  
16 can make to the public debate and dissemination of  
17 information.

18 This is the twenty-fifth anniversary of  
19 the 1978 minority ownership policy statement whose  
20 history stands as an example of what creative  
21 rulemaking can accomplish. In 1978, there was only  
22 one minority owned television station and 59 minority  
23 owned radio stations. By 1995, when the tax  
24 certificate policy was repealed in comparative  
25 hearings basically came to an end, there were 35

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1 minority owned television stations and about 320  
2 minority owned radio stations.

3 Today, in Richmond, Virginia, Radio One is  
4 the only minority owned broadcaster. Prior to  
5 deregulation there were numerous other minority  
6 owners. The significant decrease in the number of  
7 minority owned television and radio stations is an  
8 illustration of how federal rules and policy making  
9 can dramatically change the landscape of equal  
10 opportunity and diversity.

11 I would like to devote a minute or so to  
12 providing some background information on Radio One.  
13 As Radio One is the largest African-American  
14 controlled radio broadcasting company in the United  
15 States, this background information will be relevant  
16 to our discussion today.

17 My mother, Katherine L. Hughes, founded  
18 Radio One in 1980. Owning a radio station was the  
19 fulfillment of her goal of increasing the number of  
20 African-American voices heard on radio.  
21 Interestingly, she was able to realize this goal by  
22 taking advantage of the FCC's distress sell policy.  
23 Radio One's entry into broadcasting commenced with the  
24 acquisition of station WOL-AM in Washington, D.C. For  
25 seven years, this was the company's sole station and

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1 yet operating at a mere thousand watts it established  
2 the cornerstone of the company's core mission,  
3 presenting news, entertainment and information from  
4 the African-American perspective. It was on WOL-AM  
5 that my mother pioneered a new and innovative format,  
6 24 hour talk from a black perspective and adopted the  
7 slogan, "information is power."

8 The meaning of that slogan was as relevant  
9 and important to her generation as it is to mine. The  
10 ability to control the airways through ownership gives  
11 one the power to proactively inform, educate and  
12 inspire one's community. I am certain that if my  
13 mother had not been the owner of WOL, she would not  
14 have had the opportunity accomplish this important  
15 goal.

16 Over the past two decades, Radio One has  
17 grown from that single AM station to 65 stations in 22  
18 markets and also provides programming to 5 channels on  
19 **FM** satellite radio, one of which is a simulcast of  
20 WOL. Radio One's expansion to a company **of** national  
21 scope is attributable in part to the decision to go  
22 public in **1999** which made capital more accessible and  
23 less expensive and Clear Channel's commitment to  
24 divest a number of stations being acquired from its  
25 AM-FM acquisition to minority-owned companies, an

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1 example of deregulation actually creating more  
2 diversity.

3 Through that divestiture, Radio **One**  
4 acquired stations in such major markets as Los  
5 Angeles, Dallas and Houston. Although we are a public  
6 company, my mother and I continue to retain a majority  
7 of the voting control of Radio One. In spite of our  
8 significant growth, we have continued to maintain our  
9 core focus, providing entertaining and informative  
10 content that serves the needs of the African-American  
11 community.

12 Of our 65 stations, 60 have formats that  
13 are targeted toward the African-American listener.  
14 Our diverse programming formats include black talk,  
15 hip hop, R & B, jazz and gospel. I believe that  
16 unlike many of our majority owned counterparts, we  
17 offer to our listeners a viewpoint that is more  
18 specifically focused on their community's interests  
19 and needs.

20 Studies have shown that there are  
21 significant disparities in the treatment of  
22 African-Americans in local and national news. In  
23 addition, African-Americans still face a lack of  
24 quality programming in the media focused on their  
25 needs, interests and perspectives.

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1 I strongly believe that minority owned  
2 radio stations provide more minority focused content  
3 and a greater focus on the concerns of the minority  
4 community. Likewise, our listeners take great comfort  
5 in knowing that the information and opinions presented  
6 are derived from a shared perspective that there is a  
7 collective stake in the issues being discussed.

8 Perhaps the best way to illustrate this is  
9 to point out a few examples of how Radio One uniquely  
10 serves the needs of its listeners. Our stations  
11 regularly provide important health care information  
12 that is relevant to African-Americans, including  
13 information concerning the disparity and the quality  
14 of health care, the significantly higher mortality  
15 rate and the increased risk of heart disease. We also  
16 provide information on college admissions, sponsor  
17 college scholarship opportunities and help raise funds  
18 in support for historically black colleges and  
19 universities. We've raised cash and other donations  
20 for Princeville, North Carolina, the oldest town in  
21 America incorporated by freed slaves which was  
22 devastated by flood.

23 On a regular basis, we sponsor job fairs  
24 and other events in the African-American community and  
25 promote voting and other civic participation. These

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1 are just a few of the ways in which we attempt to  
2 serve the needs of our listeners.

3 Obviously, I cannot state with certainty  
4 that these issues are not of important concern to our  
5 nonminority owned companies, however, I can assure you  
6 that as an African-American owner, I am committed to  
7 ensuring that Radio One continues to focus on the  
8 African-American community and to present that  
9 viewpoint to the American public.

10 We've also just announced a new cable  
11 venture with Comcast Corporation. Comcast  
12 Corporation, now the largest cable operator in the  
13 country, shares Radio One's view of the importance and  
14 of the need for more diverse programming and as a  
15 result has committed to a significant investment and  
16 resources in this channel in order to make this a  
17 reality. Yet another example of deregulation  
18 increasing diversity.

19 Thank you.

20 MR. KRATTENMAKER: Thank you very much.  
21 Ms. Riskin?

22 MS. RISKIN: Thank you. I am Victoria  
23 Riskin, President of the Writers Guild of America,  
24 West, which represents the great majority of writers  
25 and producers who create prime time entertainment

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1 programs and I would like to add the good programs.

2 Thank you for inviting me to speak about  
3 the importance to the nation of diversity in media.  
4 The media are the modern day American town square, the  
5 place where people from different backgrounds and  
6 points of view share their stories and the public  
7 learns about the world. Here is where American  
8 democracy comes alive and the American identity is  
9 forged. But today, barriers have been erected to keep  
10 all but a handful of voices from being heard in our  
11 town square.

12 The Commission and the courts have asked  
13 for data about diversity in entertainment programming.  
14 As President of the Writers Guild, I can tell you that  
15 over the past decade, diversity **of** production sources  
16 in the marketplace has been eroded to the point of  
17 near extinction.

18 In 1992, only 15 percent of new series  
19 were produced for a network by a company it  
20 controlled. Last year, the percentage of shows  
21 produced **by** controlled companies more than quintupled  
22 to 77 percent.

23 In 1992, 16 new series were produced  
24 independently of conglomerate control. Last year,  
25 there was one.

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1           The opportunity for access for a broad  
2 range of voices has been cut dramatically. The claim  
3 has been made that because we now have hundreds of  
4 channels on cable, choices abound. But more channels  
5 does not really mean more choices. In the past, the  
6 FCC has defined a major network as one that reaches 16  
7 million or more homes. By that definition, there are  
8 **91** major networks. But **of** these 91, 73 or fully 80  
9 percent are owned or co-owned by six corporate  
10 entities. Five of these six are the same corporations  
11 that run the broadcast networks; Viacom, Disney, News  
12 Corporation, General Electric and AOL-Time Warner.

13           Any doubt about the control exercised by  
14 these five companies was dispelled in a recent report  
15 by respected Wall Street media analyst Tom Wolzien  
16 which I've attached to my comments. Wolzien points  
17 out that a strong programming oligopoly is beginning  
18 to re-emerge. For December 2002, he found that the  
19 five conglomerates controlled about a 75 percent share  
20 of prime time viewing. Wolzien concludes that over  
21 the next few years with the further consolidations he  
22 expects to occur, these five companies will control  
23 roughly the same percentage of TV households in prime  
24 time as the three networks did 40 years ago. In other  
25 words, the control by **a** few conglomerates will be as

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1 absolute as ever in history.

2 The data we submitted to the Commission  
3 documenting the dominance of content by a handful of  
4 vertically integrated conglomerates has been  
5 corroborated by an independent analyst. No longer can  
6 anyone argue that the facts of such control or their  
7 potential impact are in doubt. The old programming  
8 oligopoly of media content is being rebuilt.

9 The creative community has seen in recent  
10 years how increasingly difficult it is to bring  
11 innovative shows to the air. All too often, indeed  
12 virtually invariably, to get their work on television,  
13 writers and producers must cede ownership and creative  
14 control to the network or cable companies. Most have  
15 no choice, none at all. They must accept the network  
16 or cable company as a partner and surrender their  
17 independence with the result that if their show does  
18 not make the schedule, they are now prohibited from  
19 taking it elsewhere.

20 Nearly 100 small and medium size  
21 businesses, each with its unique point of view have  
22 disappeared in the last 10 years. Why is the  
23 disappearance of a small independent producer and  
24 writer an issue for public concern? Because with them  
25 have gone stories from hundreds of writers and

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1 producers who care deeply about original drama,  
2 comedy, history, culture and not just, for example,  
3 just ratings, ratings, all the time, ratings.

4 We ask you to consider the rules governing  
5 media ownership, as you do that you look to expand  
6 diversity, not limit it to these gigantic  
7 corporations. We ask you to take constructive action  
8 to remedy the serious imbalance that has taken root in  
9 the programming marketplace.

10 We are asking you to ensure that a few  
11 companies do not continue to have a strangle hold on  
12 free expression and open debate.

13 MR. KRATTENMAKER: Ms. Riskin, your t me  
14 is up.

15 MS. RISKIN: Thank you.

16 MR. KRATTENMAKER: Did you wish to  
17 conclude? Okay, thank you.

18 I just wanted to remind members of the  
19 audience that if you wish to -- there are cards in the  
20 back you can fill out if you've got questions you want  
21 to ask of the panelists. If we have time, I will try  
22 to ask some of these questions. If not, we'll get to  
23 them at some other point. So we welcome receiving the  
24 cards.

25 That did not come out of your time, Mr.

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1 Schwartzman.

2 MR. SCHWARTZMAN: Thank you, Mr.  
3 Krattenmaker. Thank you. I believe the Commission  
4 and should retain its existing ownership rules, except  
5 that it should eliminate the so-called UHF discount.  
6 Five minute, five points and a sixth about Telemundo,  
7 if there's time.

8 First, while I feel genuinely honored to  
9 have been asked to speak today, at the risk of seeming  
10 discourteous, I must observe that today's hearing is  
11 not likely to be very useful. To develop a complete  
12 record, you need to hold more hearings under different  
13 conditions and I don't just mean weather. The purpose  
14 of field hearings is to paint viewpoints and  
15 perspectives which are unavailable at home. This  
16 principle is especially relevant to a panel on  
17 diversity. But unlike the public forum held at  
18 Columbia University last month, today's agenda has too  
19 many familiar faces from inside the beltway and too  
20 few additional perspective from local residents.

21 Mr. Corn-Revere and I have frequently  
22 debated each other in professional meetings in  
23 Washington where we both work.

24 Ms. Thompson and Mr. Bozell also work  
25 inside the beltway.

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1           Mr. Liggins' office is technically outside  
2           the beltway, but it's actually within sight of the  
3           beltway and for all practical purposes is inside the  
4           beltway.

5           We didn't need to brave a snowstorm to  
6           present viewpoints available to you back home.

7           (Applause)

8           Not only that, the structure **of** today's  
9           hearing offers little opportunity for the exchange of  
10          ideas. Seven panelists, five minutes each, 50 minutes  
11          total, do the math. This is especially disappointing  
12          inasmuch as the record developed in this docket as  
13          Commissioners Copps and Adelstein have pointed **out**,  
14          raised many questions as to which there is yet not  
15          enough answers. This event does little to fill in the  
16          blanks and answer those questions.

17          Second, I want to say what I've said **to**  
18          the Commission on other similar occasions. We have  
19          the best system of broadcasting in the world because  
20          of, not in spite of, the ownership regulations  
21          utilized since 1934. The Commission is mandated to  
22          ensure that broadcasters serve all members of the  
23          public. The marketplace works well in many respects,  
24          but it is not perfect. In particular, the market does  
25          not recognize and serve the needs of those **who** are too

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1 old, too young, too poor to be demographically  
2 attractive. Large group owners who increasingly lack  
3 roots in the community they serve are less likely to  
4 meet the needs of everyone.

5 Over the last 25 years, I've testified  
6 before the Commission and Congress on many occasions.  
7 More often than not, I appear as I do today with  
8 broadcasters who exemplify the best service standards  
9 in the industry. But I urge you to focus on the fact  
10 that the Commission must regulate on the proclivities  
11 of the worst and most rapacious among them. You need  
12 to pay attention to who does not attend these  
13 hearings. Relaxation of national ownership caps and  
14 creation of larger local ownership combinations has  
15 permitted some broadcasters to ignore news programming  
16 and to abandon their communities in favor of voice  
17 tracking and central casting.

18 Third, I think the Commission has set an  
19 artificially high bar for those of us who support the  
20 existing ownership rules. We've been told to avoid  
21 emotionalism and confine ourselves to presenting  
22 empirical data to support the rules. I do not  
23 apologize for being emotionally attached to localism,  
24 diversity and the first amendment. Moreover, the term  
25 empirical has been wrongly equated with statistical.

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